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PCI TRADING, LLC, GUY KOREN,
8 POTATO CORNER LA GROUP, LLC,
NKM CAPITAL GROUP, LLC, J & K
9 AMERICANA, LLC, J&K LAKEWOOD,
LLC, J&K OAKRIDGE, LLC, J&K
10 VALLEY FAIR, LLC, J & K ONTARIO,
LLC, J&K PC TRUCKS, LLC, GK
11 CAPITAL GROUP, LLC, HLK MILPITAS,
LLC, and GK CERRITOS, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 SHAKEY'S PIZZA ASIA VENTURES,
16 INC, a Philippines corporation,

Plaintiff.

10 | VS.

20 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING , LLC, a
21 Delaware limited liability company; GUY
KOREN, an individual; POTATO CORNER
22 LA GROUP, LLC, a California limited
liability company; NKM CAPITAL GROUP,
23 LLC, a California limited liability company;
J & K AMERICANA, LLC, a California
24 limited liability company; J&K
LAKEWOOD, LLC, a California limited
liability company; J&K VALLEY FAIR,
25 LLC, a California limited liability company;
J & K ONTARIO, LLC, a California limited
liability company; HLK MILPITAS, LLC, a
26 California, limited liability company; GK
CERRITOS, LLC, a California, limited
liability company; J&K PC TRUCKS. LLC.
27
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Case No. 2:24-CV-04546-SB(AGRx)

Hon. Stanley Blumenfeld, Jr.

**DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND
COUNTERCLAIM/THIRD-
PARTY COMPLAINT**

Complaint Filed: May 31, 2024
Trial Date: August 4, 2025

DEMAND FOR JURY TRIAL

1 a California limited liability company; and
2 GK CAPITAL GROUP, LLC, a California
limited liability company and DOES 1
through 100, inclusive,
3

4 Defendants.

5 PCJV USA, LLC, a Delaware limited
6 liability company; PCI TRADING LLC, a
7 Delaware limited liability company;
8 POTATO CORNER LA GROUP LLC, a
California limited liability company; GK
9 CAPITAL GROUP, LLC, a California
limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
company; and GUY KOREN, an individual,

10 Counter-Claimants

11 v.

12 SHAKEY'S PIZZA ASIA VENTURES,
13 INC, a Philippines corporation,

14 Counter-Defendant.

15
16 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
17 Delaware limited liability company;
18 POTATO CORNER LA GROUP LLC, a
California limited liability company; GK
19 CAPITAL GROUP, LLC, a California
limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
company; and GUY KOREN, an individual,

20 Third Party Plaintiffs

21 v.

22 PC INTERNATIONAL PTE LTD., a
Singapore business entity; SPAVI
23 INTERNATIONAL USA, INC., a California
corporation; CINCO CORPORATION, a
24 Philippines corporation; and ROES 1 through
25 10, inclusive,

26 Third Party Defendants.

1 All defendants named in the First Amended Complaint (“FAC,” Doc. No. 65)
2 of Plaintiff SHAKEY’S PIZZA ASIA VENTURES, INC (“Plaintiff” or “SPAVI”),
3 namely Defendants PCJV USA, LLC (“PCJV”), PCI TRADING, LLC (“PCIT”),
4 GUY KOREN (“Koren”), POTATO CORNER LA GROUP, LLC, NKM CAPITAL
5 GROUP, LLC, J & K AMERICANA, LLC, J&K LAKEWOOD, LLC, J&K
6 OAKRIDGE, LLC, J&K VALLEY FAIR, LLC, J & K ONTARIO, LLC, J&K PC
7 TRUCKS, LLC, GK CAPITAL GROUP, LLC, HLK MILPITAS, LLC, and GK
8 CERRITOS, LLC (collectively, “Defendants”), by and through their counsel, hereby
9 answer the FAC (each paragraph number below correlates to the corresponding
10 paragraph number of the FAC) as follows below (and certain of those Defendants
11 assert counterclaims and third party claims as further set forth herein):

12 1. Defendants admit that Potato Corner is a non-United States-based,
13 “international fast food outlet chain originating in the Philippines,” and are informed
14 and believe that Potato Corner has over 1,000 (predominantly outdoor) food cart
15 stands/units in or around the Philippines. Defendants deny the remaining factual
16 allegations and of those that constitute legal argument, opinion, conclusion,
17 innuendo, insinuation, or based on an unfounded or misleading premise, no response
18 is required.

19 2. Defendants deny that it is undisputed that Plaintiff owns Potato Corner
20 United States intellectual property rights. Defendants lack knowledge or information
21 sufficient to form a belief about the truth or falsity of the allegations relating to
22 Plaintiff’s alleged 2022 transaction with Cinco Corporation and, on that basis, deny
23 those allegations.

24 3. Defendants deny the factual allegations and of those that constitute
25 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
26 unfounded or misleading premise, no response is required.

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28 / / /

1 4. Defendants deny the factual allegations and of those that constitute
2 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
3 unfounded or misleading premise, no response is required.

4 5. Defendants admit that they made reasonable and good faith efforts to
5 resolve all actual, potential, and threatened litigation, making extremely generous
6 concessions, and entering a tolling agreement to enable any further negotiations
7 through at least January 2, 2025. Defendants deny the remaining factual allegations
8 and of those that constitute legal argument, opinion, conclusion, innuendo,
9 insinuation, or based on an unfounded or misleading premise, no response is
10 required.

11 6. Defendants deny the factual allegations and of those that constitute
12 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
13 unfounded or misleading premise, no response is required.

14 7. Defendants deny the factual allegations and of those that constitute
15 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
16 unfounded or misleading premise, no response is required.

17 8. Defendants deny the factual allegations and of those that constitute
18 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
19 unfounded or misleading premise, no response is required.

20 9. Defendants deny the factual allegations and of those that constitute
21 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
22 unfounded or misleading premise, no response is required.

23 10. Defendants admit that “flavorings” are not Plaintiff’s trade secrets.
24 Defendants deny the remaining factual allegations and of those that constitute legal
25 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
26 misleading premise, no response is required.

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1 11. Defendants deny the factual allegations and of those that constitute
2 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
3 unfounded or misleading premise, no response is required.

4 12. Defendants admit that annual franchise disclosure documents have
5 been filed with appropriate state agencies. Defendants deny the remaining factual
6 allegations and of those that constitute legal argument, opinion, conclusion,
7 innuendo, insinuation, or based on an unfounded or misleading premise, no response
8 is required.

9 13. Defendants deny the factual allegations and of those that constitute
10 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
11 unfounded or misleading premise, no response is required.

12 14. Defendants deny the factual allegations and of those that constitute
13 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
14 unfounded or misleading premise, no response is required.

15 15. Defendants deny the factual allegations and of those that constitute
16 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
17 unfounded or misleading premise, no response is required.

18 16. Defendants deny the factual allegations and of those that constitute
19 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
20 unfounded or misleading premise, no response is required.

21 17. Defendants admit that the NKM License Agreement exists. Defendants
22 deny the remaining factual allegations and of those that constitute legal argument,
23 opinion, conclusion, innuendo, insinuation, or based on an unfounded or misleading
24 premise, no response is required.

25 18. Defendants admit that the JVA and AJVA exist. Defendants deny the
26 remaining factual allegations and of those that constitute legal argument, opinion,
27 conclusion, innuendo, insinuation, or based on an unfounded or misleading premise,
28 no response is required.

1 19. Defendants admit that the MLA exists and that Koren's 2018
2 declaration truthfully asserts testimony concerning, among other things, its existence
3 and reliance thereon. Defendants deny the remaining factual allegations and of those
4 that constitute legal argument, opinion, conclusion, innuendo, insinuation, or based
5 on an unfounded or misleading premise, no response is required.

6 20. Defendants deny the factual allegations and of those that constitute
7 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
8 unfounded or misleading premise, no response is required.

9 21. Defendants lack knowledge or information sufficient to form a belief
10 about the truth or falsity of the factual allegations and, on that basis, deny those
11 allegations, and of those that constitute legal argument, opinion, conclusion,
12 innuendo, insinuation, or based on an unfounded or misleading premise, no response
13 is required.

14 22. Defendants admit the factual allegations relating to the entity's
15 citizenship, management, and ownership, and of those that constitute legal
16 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
17 misleading premise, no response is required.

18 23. Defendants admit the factual allegations relating to the entity's
19 citizenship, management, and ownership, and of those that constitute legal
20 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
21 misleading premise, no response is required.

22 24. Defendants admit the factual allegations relating to the entity's
23 citizenship, management, and ownership, and of those that constitute legal
24 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
25 misleading premise, no response is required.

26 25. Defendants admit the factual allegations relating to the entity's
27 citizenship, management, and ownership, and of those that constitute legal
28

1 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
2 misleading premise, no response is required.

3 26. Defendants admit the factual allegations relating to the entity's
4 citizenship, management, and ownership, and of those that constitute legal
5 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
6 misleading premise, no response is required.

7 27. Defendants admit the factual allegations relating to the entity's
8 citizenship, management, and ownership, and of those that constitute legal
9 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
10 misleading premise, no response is required.

11 28. Defendants admit the factual allegations relating to the entity's
12 citizenship, management, and ownership, and of those that constitute legal
13 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
14 misleading premise, no response is required.

15 29. Defendants admit the factual allegations relating to the entity's
16 citizenship, management, and ownership, and of those that constitute legal
17 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
18 misleading premise, no response is required.

19 30. Defendants admit the factual allegations relating to the entity's
20 citizenship, management, and ownership, and of those that constitute legal
21 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
22 misleading premise, no response is required.

23 31. Defendants admit the factual allegations relating to the entity's
24 citizenship, management, and ownership, and of those that constitute legal
25 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
26 misleading premise, no response is required.

27 32. Defendants admit the factual allegations relating to the entity's
28 citizenship, management, and ownership, and of those that constitute legal

1 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
2 misleading premise, no response is required.

3 33. Defendants admit the factual allegations relating to the entity's
4 citizenship, management, and ownership, and of those that constitute legal
5 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
6 misleading premise, no response is required.

7 34. Defendants admit the factual allegations relating to the entity's
8 citizenship, management, and ownership, and of those that constitute legal
9 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
10 misleading premise, no response is required.

11 35. Defendants deny the factual allegations and of those that constitute
12 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
13 unfounded or misleading premise, no response is required.

14 36. Defendants deny the factual allegations and of those that constitute
15 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
16 unfounded or misleading premise, no response is required.

17 37. No allegations made; no response is required.

18 38. Legal argument/conclusion/opinion; no response is required.

19 39. Legal argument/conclusion/opinion; no response is required.

20 40. Defendants lack knowledge or information sufficient to form a belief
21 about the truth or falsity of the factual allegations with respect to Plaintiff's alleged
22 citizenship and the alleged amount in controversy, and deny those factual
23 allegations, and of those that constitute legal argument, conclusion, or opinion, no
24 response is required.

25 41. Legal argument/conclusion/opinion; no response is required.

26 42. Legal argument/conclusion/opinion; no response is required.

27 43. Defendants lack knowledge or information sufficient to form a belief
28 about the truth or falsity of the factual allegations and, on that basis, deny those

1 allegations, and of those that constitute legal argument, opinion, conclusion,
2 innuendo, insinuation, or based on an unfounded or misleading premise, no response
3 is required.

4 44. Defendants are informed and believe that Potato Corner began in or
5 about 1992 and has over 1,000, predominantly outdoor, food cart stands in or around
6 the Philippines. Defendants deny the remaining factual allegations and of those that
7 constitute legal argument, opinion, conclusion, innuendo, insinuation, or based on
8 an unfounded or misleading premise, no response is required.

9 45. Defendants lack knowledge or information sufficient to form a belief
10 about the truth or falsity of the factual allegations and, on that basis, deny those
11 allegations, and of those that constitute legal argument, opinion, conclusion,
12 innuendo, insinuation, or based on an unfounded or misleading premise, no response
13 is required.

14 46. Defendants lack knowledge or information sufficient to form a belief
15 about the truth or falsity of the factual allegations and, on that basis, deny those
16 allegations, and of those that constitute legal argument, opinion, conclusion,
17 innuendo, insinuation, or based on an unfounded or misleading premise, no response
18 is required.

19 47. Defendants lack knowledge or information sufficient to form a belief
20 about the truth or falsity of the factual allegations and, on that basis, deny those
21 allegations, and of those that constitute legal argument, opinion, conclusion,
22 innuendo, insinuation, or based on an unfounded or misleading premise, no response
23 is required.

24 48. Defendants lack knowledge or information sufficient to form a belief
25 about the truth or falsity of the factual allegations and, on that basis, deny those
26 allegations, and of those that constitute legal argument, opinion, conclusion,
27 innuendo, insinuation, or based on an unfounded or misleading premise, no response
28 is required.

1 49. Defendants deny the factual allegations and of those that constitute
2 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
3 unfounded or misleading premise, no response is required.

4 50. Defendants lack knowledge or information sufficient to form a belief
5 about the truth or falsity of the factual allegations and, on that basis, deny those
6 allegations, and of those that constitute legal argument, opinion, conclusion,
7 innuendo, insinuation, or based on an unfounded or misleading premise, no response
8 is required.

9 51. Defendants lack knowledge or information sufficient to form a belief
10 about the truth or falsity of the factual allegations and, on that basis, deny those
11 allegations, and of those that constitute legal argument, opinion, conclusion,
12 innuendo, insinuation, or based on an unfounded or misleading premise, no response
13 is required.

14 52. Defendants admit that Cinco Corporation and its owners (the “Cinco
15 Group”) alongside their agents explored a United States expansion through Koren
16 and others in or about the 2008-2009 time period, and that the parties place a great
17 deal of trust in each other.

18 53. Defendants admit that the NKM License Agreement comprises the first
19 written agreement of the parties, as later modified. Defendants admit that Nemanim
20 and Jacoby are not parties to this action and no longer maintain any ownership
21 interests in any of the Defendants. Defendants deny the remaining factual
22 allegations and of those that constitute legal argument, opinion, conclusion,
23 innuendo, insinuation, or based on an unfounded or misleading premise, no response
24 is required.

25 54. Defendants deny the factual allegations and of those that constitute
26 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
27 unfounded or misleading premise, no response is required.

1 55. Defendants admit that before the first domestic Potato Corner outlet
2 opened, the Cinco Group alongside agents and attorneys approached Koren in or
3 about 2010 to transform the relationship into a joint venture franchise relationship.
4 Defendants deny the remaining factual allegations and of those that constitute legal
5 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
6 misleading premise, no response is required.

7 56. Defendants admit that PCJV was formed to serve as the franchisor of
8 Potato Corner outlets in the United States (and Israel), and that the LA Group
9 maintained a right to 40% of PCJV's distributions alongside management rights,
10 board seats, and voting rights. Defendants deny the remaining factual allegations
11 and of those that constitute legal argument, opinion, conclusion, innuendo,
12 insinuation, or based on an unfounded or misleading premise, no response is
13 required.

14 57. Defendants admit that the JVA and AJVA were negotiated between the
15 Cinco Group and LA Group, and that the LA Group relied on the Cinco Group and
16 DLA Piper LLP to comply with all regulatory requirements. Defendants admit that
17 PCI was added to the AJVA for purposes unrelated to the franchisor operations.
18 Defendants deny the remaining factual allegations and of those that constitute legal
19 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
20 misleading premise, no response is required.

21 58. Defendants deny the factual allegations and of those that constitute
22 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
23 unfounded or misleading premise, no response is required.

24 59. Defendants deny the factual allegations and of those that constitute
25 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
26 unfounded or misleading premise, no response is required.

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1 60. Defendants deny the factual allegations and of those that constitute
2 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
3 unfounded or misleading premise, no response is required.

4 61. Defendants admit that Cinco Corporation (not Cinco Group) filed the
5 state court action on April 10, 2018. Defendants deny the remaining factual
6 allegations and of those that constitute legal argument, opinion, conclusion,
7 innuendo, insinuation, or based on an unfounded or misleading premise, no response
8 is required.

9 62. Defendants admit that Koren filed a declaration on June 13, 2018
10 alongside Exhibit “B” to that declaration correctly attaching the very written
11 agreement that the relevant parties had entered, relied upon, and referenced at prior
12 oral argument sessions with the state court. Defendants deny the remaining factual
13 allegations, and of those that constitute legal argument, opinion, conclusion,
14 innuendo, insinuation, or based on an unfounded or misleading premise, no response
15 is required.

16 63. Defendants admit that Koren’s contention that the MLA, as modified,
17 was and is an enforceable agreement was and is true. Defendants deny that Koren
18 ever testified that the MLA was “executed” by Cinco (Defendants are without
19 information or belief sufficient to admit or deny whether Cinco signed it), but that it
20 was enforceable and relied upon by Defendants (including PCJV, the Cinco Group’s
21 own majority-controlled company who made annual representations in the FDDs
22 regarding the efficacy of the MLA, among other things). Defendants deny the
23 remaining factual allegations and of those that constitute legal argument, opinion,
24 conclusion, innuendo, insinuation, or based on an unfounded or misleading premise,
25 no response is required.

26 64. Defendants admit that Koren’s contention that the MLA, as modified,
27 was and is an enforceable agreement was and is true. Defendants deny that Koren
28 ever testified that the MLA was “executed” by Cinco (Defendants are without

1 information or belief sufficient to admit or deny whether Cinco signed it), but that it
2 was enforceable and relied upon by Defendants (including PCJV, the Cinco Group's
3 own majority-controlled company who made annual representations in the FDDs
4 regarding the efficacy of the MLA, among other things). Defendants deny the
5 remaining factual allegations and of those that constitute legal argument, opinion,
6 conclusion, innuendo, insinuation, or based on an unfounded or misleading premise,
7 no response is required.

8 65. Defendants deny the factual allegations and of those that constitute
9 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
10 unfounded or misleading premise, no response is required.

11 66. Defendants deny the factual allegations and of those that constitute
12 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
13 unfounded or misleading premise, no response is required.

14 67. Defendants admit that they opened the first Potato Corner USA
15 franchised unit in the United States. Defendants deny the remaining factual
16 allegations and of those that constitute legal argument, opinion, conclusion,
17 innuendo, insinuation, or based on an unfounded or misleading premise, no response
18 is required.

19 68. Defendants admit that Koren became PCJV's president, reported to a
20 managing board of seven members composed of members of the Cinco Group
21 (alongside the Cinco Group's attorneys and agents), and LA Group. Defendants
22 deny the remaining factual allegations and of those that constitute legal argument,
23 opinion, conclusion, innuendo, insinuation, or based on an unfounded or misleading
24 premise, no response is required.

25 69. Defendants deny the factual allegations and of those that constitute
26 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
27 unfounded or misleading premise, no response is required.

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1 70. Defendants admit that by virtue of a transaction whereby the Cinco
2 Group transferred 55% of their interests to a third-party group (the “Hernandez
3 Group”) without the LA Group’s consent, the LA Group and Koren asserted their
4 claim that the Cinco Group had breached the prior consent provision in PCJV’s
5 governing documents alongside, also, the right of first refusal provision. Defendants
6 deny the remaining factual allegations and of those that constitute legal argument,
7 opinion, conclusion, innuendo, insinuation, or based on an unfounded or misleading
8 premise, no response is required.

9 71. Defendants admit that Cinco Corporation alone filed the state court
10 action on April 10, 2018. Defendants deny the remaining factual allegations and of
11 those that constitute legal argument, opinion, conclusion, innuendo, insinuation, or
12 based on an unfounded or misleading premise, no response is required.

13 72. Defendants admit that the state court made multiple TRO rulings on
14 May 11, 2018, including the one alleged.

15 73. Defendants admit that on or about June 19, 2018, the state court
16 granted Koren preliminary injunctive relief. Defendants deny the remaining factual
17 allegations and of those that constitute legal argument, opinion, conclusion,
18 innuendo, insinuation, or based on an unfounded or misleading premise, no response
19 is required.

20 74. Defendants admit that the Hernandez Group (not Cinco Group)
21 attempted to notice a board meeting and that Koren allowed a meeting with the
22 Cinco Group (not Hernandez Group), but they declined. Defendants deny the
23 remaining factual allegations and of those that constitute legal argument, opinion,
24 conclusion, innuendo, insinuation, or based on an unfounded or misleading premise,
25 no response is required.

26 75. Defendants admit that Potato Corner International, Inc. (“PC
27 International,” not the “Cinco Group” or even Cinco) filed a motion for preliminary
28 injunction attempting, essentially, to reverse the June 2018 injunction ruling, which

1 motion was correctly denied. Defendants deny the remaining factual allegations and
2 of those that constitute legal argument, opinion, conclusion, innuendo, insinuation,
3 or based on an unfounded or misleading premise, no response is required.

4 76. Defendants deny the factual allegations and of those that constitute
5 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
6 unfounded or misleading premise, no response is required.

7 77. Defendants admit that a settlement agreement made effective May 28,
8 2024 was entered among relevant “Koren Parties” and “Cinco Parties,” which
9 settlement documents comprise a settlement agreement and membership interest
10 purchase agreement whereby the Cinco Parties, inclusive of Cinco Corporation and
11 PC International, among other things, transferred all their rights and interests in
12 PCJV and PCIT to Koren’s entity, GK Capital Group. Defendants admit that the
13 state court action was dismissed with prejudice on May 28, 2024 during a hearing
14 with the state court judge with Plaintiff’s and the Cinco Parties’ counsel in
15 attendance. Defendants deny the remaining factual allegations and of those that
16 constitute legal argument, opinion, conclusion, innuendo, insinuation, or based on
17 an unfounded or misleading premise, no response is required.

18 78. Defendants lack knowledge or information sufficient to form a belief
19 about the truth or falsity of the factual allegations and, on that basis, deny those
20 allegations, and of those that constitute legal argument, opinion, conclusion,
21 innuendo, insinuation, or based on an unfounded or misleading premise, no response
22 is required.

23 79. Defendants admit that they made reasonable and good faith efforts to
24 resolve all actual, potential, and threatened litigation, making extremely generous
25 concessions, and entering a tolling agreement to enable any further negotiations
26 through at least January 2, 2025. Defendants deny the remaining factual allegations
27 and of those that constitute legal argument, opinion, conclusion, innuendo,
28

1 insinuation, or based on an unfounded or misleading premise, no response is
2 required.

3 80. Defendants admit that they made reasonable and good faith efforts to
4 resolve all actual, potential, and threatened litigation, making extremely generous
5 concessions, and entering a tolling agreement to enable any further negotiations
6 through at least January 2, 2025. Defendants deny the remaining factual allegations
7 and of those that constitute legal argument, opinion, conclusion, innuendo,
8 insinuation, or based on an unfounded or misleading premise, no response is
9 required.

10 81. Defendants admit that they made reasonable and good faith efforts to
11 resolve all actual, potential, and threatened litigation, making extremely generous
12 concessions, and entering a tolling agreement to enable any further negotiations
13 through at least January 2, 2025. Defendants deny the remaining factual allegations
14 and of those that constitute legal argument, opinion, conclusion, innuendo,
15 insinuation, or based on an unfounded or misleading premise, no response is
16 required.

17 82. Defendants admit that they made reasonable and good faith efforts to
18 resolve all actual, potential, and threatened litigation, making extremely generous
19 concessions, and entering a tolling agreement to enable any further negotiations
20 through at least January 2, 2025. Defendants deny the remaining factual allegations
21 and of those that constitute legal argument, opinion, conclusion, innuendo,
22 insinuation, or based on an unfounded or misleading premise, no response is
23 required.

24 83. Defendants admit that they made reasonable and good faith efforts to
25 resolve all actual, potential, and threatened litigation, making extremely generous
26 concessions, and entering a tolling agreement to enable any further negotiations
27 through at least January 2, 2025. Defendants deny the remaining factual allegations
28 and of those that constitute legal argument, opinion, conclusion, innuendo,

1 insinuation, or based on an unfounded or misleading premise, no response is
2 required.

3 84. Other than sending an inconspicuous transmission to Koren on May 31,
4 2024, side-stepping Defendants' counsel, which is admitted, Defendants lack
5 knowledge or information sufficient to form a belief about the truth or falsity of the
6 factual allegations and, on that basis, deny those allegations, and of those that
7 constitute legal argument, opinion, conclusion, innuendo, insinuation, or based on
8 an unfounded or misleading premise, no response is required.

9 85. Other than continuing to operate as they had for 15 years until
10 preliminary enjoined, which is admitted, Defendants deny the remaining factual
11 allegations and of those that constitute legal argument, opinion, conclusion,
12 innuendo, insinuation, or based on an unfounded or misleading premise, no response
13 is required.

14 86. Defendants deny the factual allegations and of those that constitute
15 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
16 unfounded or misleading premise, no response is required.

17 87. Defendants admit that Plaintiff has interfered with PCJV's and PCIT's
18 relationships and contracts and induced the breach of several agreements, among
19 other things. Defendants deny the remaining factual allegations and of those that
20 constitute legal argument, opinion, conclusion, innuendo, insinuation, or based on
21 an unfounded or misleading premise, no response is required.

22 88. Defendants admit that "flavorings" are not Plaintiff's trade secrets.
23 Defendants deny the remaining factual allegations and of those that constitute legal
24 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
25 misleading premise, no response is required.

26 89. Defendants deny the factual allegations and of those that constitute
27 legal argument, opinion, conclusion, innuendo, insinuation, or based on an
28 unfounded or misleading premise, no response is required.

1 90. Defendants admit that “flavorings” are not Plaintiff’s trade secrets.
2 Defendants deny the remaining factual allegations and of those that constitute legal
3 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or
4 misleading premise, no response is required.

5 91. Defendants deny the factual allegations and of those that constitute legal
6 argument, opinion, conclusion, innuendo, insinuation, or based on an unfounded or misleading premise, no response is required.

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27 162. Defendants re-allege and incorporate by reference each of their
28 responses contained in the preceding paragraphs as if fully set forth herein.

1 163. Defendants admit that a dispute and controversy exists. Defendants
2 deny the remaining charging allegations, and of those that constitute legal argument,
3 opinion, conclusion, innuendo, insinuation, or based on an unfounded or misleading
4 premise, no response is required.

5 164. Defendants deny all charging allegations, and of those that constitute
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15 unfounded or misleading premise, no response is required.

16 177. Dismissed per Order on Defendants' Motion to Dismiss, Doc. No. 99.
17 No response required.

18 178. Dismissed per Order on Defendants' Motion to Dismiss, Doc. No. 99.
19 No response required.

20 179. Dismissed per Order on Defendants' Motion to Dismiss, Doc. No. 99.
21 No response required.

22 180. Dismissed per Order on Defendants' Motion to Dismiss, Doc. No. 99.
23 No response required.

24 181. Dismissed per Order on Defendants' Motion to Dismiss, Doc. No. 99.
25 No response required.

26 182. Dismissed per Order on Defendants' Motion to Dismiss, Doc. No. 99.
27 No response required.

28 / / /

PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to any of the relief sought in its prayer for relief.

AFFIRMATIVE DEFENSES

Pursuant to Federal Rules of Civil Procedure, Rule 8(c), Defendants set forth the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's claims, in whole or in part, fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiff's claims are barred, in whole or in part, by the Full Faith and Credit Clause of the U.S. Constitution, as implemented by the 1790 Act (28 U.S.C. § 1738) insofar as issues and claims were disposed through and with the effect of a state court judgment with prejudice and prior orders and releases, which should be given full and complete faith and credit.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claims are barred, in whole or in part, by the doctrines/rules of res judicata, issue preclusion, claim preclusion, collateral estoppel, and/or release, insofar as issues and claims were disposed through and with the effect of a state court judgment with prejudice and prior orders and releases, which are dispositive.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's claims are barred, in whole or in part, by the doctrines/rules of waiver, consent, acquiescence, ratification, promissory estoppel, equitable estoppel, and/or judicial estoppel insofar as Cinco Corporation (the owner of alleged intellectual property rights), Plaintiff, and their agents waived, consented to, acquiesced to, or ratified Defendants' conduct, and/or otherwise induced reliance on agreements based on promises, representations, and/or conduct, or otherwise made

1 judicial admissions in the prior state court action and this action that are dispositive
2 to the legal issues presented in this action.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 5. Plaintiff's claims are barred, in whole or in part, by the doctrines/rules
5 of fraud, tortious interference, breach of contract/inducement to breach contract,
6 unclean hands, bad faith, and *in pari delicto* insofar as Plaintiff's alleged acquisition
7 of intellectual property rights affecting the United States operations was improper.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 6. Plaintiff's claims are barred, in whole or in part, by the doctrines/rules
10 of laches and statutes of limitations insofar as the alleged claims long pre-existed the
11 initiation of this lawsuit insofar that the United States operations have largely
12 operated the same way for almost 15 years.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 7. Plaintiff's claims are barred, in whole or in part, by virtue of the fact
15 that Defendants maintain statutory, prior, exclusive, perpetual, and/or senior rights
16 to the alleged intellectual property. Indeed, any alleged assigned registrations,
17 including any allegedly incontestable registration, are barred, in whole or in part, by
18 numerous statutory defenses, including those listed in Sections 14, 15 and 33(b) of
19 the Lanham Act. Among other things, as evidenced by PCJV's governing
20 documents, if PCJV did not transfer rights to Plaintiff's predecessor-in-interest
21 under the MLA, PCJV is the senior user of the mark, Plaintiff's predecessor-in-
22 interest falsely/fraudulently represented to the USPTO that it made continuous use
23 of the mark for five consecutive years, Plaintiff's predecessor-in-interest did not
24 perfect but abandoned any separately claimed trademark rights, the registered mark
25 has been controlled by PCJV for almost 15 years, Plaintiff and its predecessor-in-
26 interest acquiesced in PCJV's control of the mark, including years after the alleged
27 assignment to Plaintiff, Plaintiff aided and abetted and/or induced its predecessor-in-
28 interest to breach fiduciary and/or contractual obligations to Defendants, and

1 Plaintiff is barred by equitable principals from asserting the marks against
2 Defendants, including under the doctrines of prior notice of prior rights, retraxit,
3 laches, estoppel and unclean hands.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 8. Plaintiff's claims are barred, in whole or in part, by virtue of the fact
6 that Defendants maintain licenses and/or other rights to use the alleged intellectual
7 property.

8 **NINTH AFFIRMATIVE DEFENSE**

9 9. Plaintiff's claims are barred, in whole or in part, by virtue of the fact
10 that Plaintiff failed to join necessary and/or indispensable parties to its FAC.

11 **TENTH AFFIRMATIVE DEFENSE**

12 10. Plaintiff's claims are barred, in whole or in part, since alleged "trade
13 secret information" was readily ascertainable by proper means.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 11. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed
16 to mitigate alleged damages, if any.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 12. Plaintiff's claims are barred, in whole or in part, because Plaintiff either
19 contributed to its own alleged harm or is not entitled to any recovery against
20 Defendants because any alleged harm to Plaintiff was the result of conduct of other
21 parties, such as Cinco Corporation and its agents.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 13. Plaintiff's claims are barred, in whole or in part, due to the lack of an
24 offer, acceptance, or consideration of any alleged "at-will license" arrangement.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 14. Plaintiff's claims are barred, in whole or in part, insofar as to the extent
27 Plaintiff is entitled to any relief, that relief must be reduced or eliminated by the
28 principles of offset or setoff.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks
standing.

COUNTERCLAIM AND THIRD-PARTY COMPLAINT

Counterclaimants and Third Party Plaintiffs PCJV USA, LLC ("PCJV"), PCI Trading LLC ("PCIT"), Potato Corner LA Group LLC ("LA Group LLC"), GK Capital Group, LLC ("GK Capital"), NKM Capital Group LLC ("NKM"), and Guy Koren ("Koren") (collectively, "Cross-Complainants") hereby bring the following Counterclaim and Third-Party Complaint against Counterclaim-Defendants/Third Party Defendants Shakey's Pizza Asia Ventures, Inc. ("SPAVI"), PC International Pte Ltd. ("PCIPL"), SPAVI International USA, Inc. ("SPAVI USA"), Cinco Corporation ("Cinco"), and ROES 1 through 10, inclusive (collectively, "Cross-Defendants"), as follows:

PARTIES

1. PCJV is a Delaware limited liability company, a citizen of the State of California, doing business in Los Angeles County, California.

2. PCIT is a Delaware limited liability company, a citizen of the State of California, doing business in Los Angeles County, California.

3. LA Group LLC is a California limited liability company, a citizen of the State of California, doing business in Los Angeles County, California.

4. GK Capital is a Delaware limited liability company, a citizen of the State of California, doing business in Los Angeles County, California.

5. NKM is a Delaware limited liability company, a citizen of the State of California, doing business in Los Angeles County, California.

6. Koren is an individual, a citizen of the State of California, and managing member of PCJV, PCIT, LA Group LLC, GK Capital, and NKM.

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1 7. Cross-Complainants are informed and believe and thereon allege that
2 SPAVI is a Philippines-based corporation doing business in the United States,
3 including within this judicial district.

4 8. Cross-Complainants are informed and believe and thereon allege that
5 PCIPL is a Singapore-based corporation doing business in the United States,
6 including within this judicial district.

7 9. Cross-Complainants are informed and believe and thereon allege that
8 SPAVI USA is a Delaware limited liability company with its principal place of
9 business in Chino Hills, California, doing business in the United States, including
10 within this judicial district.

11 10. Cross-Complainants are informed and believe and thereon allege that
12 Cinco is a Philippines-based corporation doing business in the United States,
13 including within this judicial district.

14 11. The true names and capacities of the Cross-Defendants sued herein as
15 ROES 1 through 10, inclusive, are currently unknown to Cross-Complainants, who
16 therefore sue such Cross-Defendants by fictitious names. Each of the Cross-
17 Defendants designated herein as a ROE is legally responsible for the unlawful acts
18 alleged herein. Cross-Complainants will seek leave of Court to amend this pleading
19 to reflect the true names and capacities of the ROE Cross-Defendants when such
20 identities become known.

21 12. Cross-Complainants are informed and believe and thereon allege that at
22 all relevant times, each and every Cross-Defendant was acting as an agent of other
23 Cross-Defendants and was acting within the course and scope of said agency (or as
24 alter egos) with the full knowledge and consent of other Cross-Defendants. Cross-
25 Complainants are informed and believe and thereon alleges that each of the acts
26 and/or omissions complained of herein was made known to, and ratified by, some or
27 all the Cross-Defendants.

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1 JURISDICTION AND VENUE

2 13. Pursuant to 28 U.S.C. Sections 1331, 1338, and 1367, the Court has
3 subject matter jurisdiction over this matter insofar as it raises federal questions and
4 ancillary/supplemental jurisdiction over the remaining claims because the facts
5 giving rise to those claims arise from the same common nucleus of operative facts.

6 14. The Court has personal jurisdiction over Cross-Defendants because
7 Cross-Defendants have either consented to personal jurisdiction over them or
8 committed and continue to commit the wrongful acts complained of herein, within
9 this State and judicial district, purposefully availing themselves of California's
10 jurisdiction.

11 15. Venue is proper in this District pursuant to 28 U.S.C. Section 1391
12 because Cross-Defendants transact business in this judicial district and because a
13 substantial part of the events or omissions giving rise to the claims occurred in this
14 judicial district.

15 GENERAL ALLEGATIONS

16 16. “It makes me feel safe to award you the rights to the U.S.,” said the
17 Potato Corner international brand-owner (Cinco’s CEO, Jose P. Magsaysay, Jr.) to
18 Koren over fifteen years ago. This commitment launched a series of events, first,
19 entry into a written license agreement with NKM (the “NKM License Agreement,”
20 a true and correct copy of which is attached as **Exhibit A** and incorporated by
21 reference) and, second, inducing Koren (then, only-NKM) to forego being a
22 domestic licensee in California to becoming a partner with the international brand-
23 owner in creating and developing a U.S. franchise system, and operating it, which
24 the NKM License Agreement was ultimately rolled into.

25 17. U.S.-based partners (led by Koren, known as the “LA Group” with a
26 40% ownership stake and 3 of 7 board seats) and Philippines-based partners (led by
27 non-party Cinco Corporation (“Cinco”) and its 4 owners (collectively, the “Cinco
28

1 Group” with a 60% ownership stake and 4 of 7 Board seats) launched PCJV,¹ the
2 first continuous and exclusive user of U.S. Potato Corner marks. PCJV, through
3 Koren, developed the U.S. model quick-service franchise restaurant system and
4 grew to dozens of units.

5 18. PCJV’s operations, including the right to control the U.S. trademarks,
6 vested with PCJV’s Board of Managers and President. As part of PCJV’s governing
7 documents, the Cinco Group not only agreed that PCJV could use and would be the
8 vehicle through which intellectual property rights would expand in the United
9 States, but also agreed that Koren and his LA Group would have control and
10 management rights over it. The Cinco Group made that literal “investment” in PCJV
11 when they approached Koren to advance capital and employ sweat equity to jointly
12 develop and operate a national franchise system as the vehicle through which
13 international branding rights would expand to the U.S. PCJV’s governing
14 documents, which *followed*, memorialized an agreement among the 7 partners that
15 embodied an agreed-upon license:

- 16 a. of perpetual duration (unless terminated by a 75% vote of the Board);
17 b. obligating the to-be-formed “Company” (PCJV) to enter into a master
18 license agreement with Cinco;
19 c. restricting both the LA Group and the Cinco Group from assigning any
20 rights or obligations with the prior written consent of the other;
21 d. commanding the partners to use best efforts in cooperating for PCJV’s
22 success; and
23 e. requiring the partners to execute and deliver all documents necessary to
24 consummate the transactions contemplated therein.

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27 ¹ PCJV stands for “Potato Corner Joint Venture.” The same partners also launched
28 PCIT, a supply-chain company.

1 True and correct copies of PCJV's Joint Venture Agreement ("JVA"), Limited
2 Liability Company Agreement ("LLC Agreement"), and Amended Joint Venture
3 Agreement ("AJVA") are attached hereto as **Exhibits B, C, and D**, respectively, and
4 incorporated by reference herein.

5 19. Cinco's lawyers at DLA Piper LLP ("DLA") (who also represented
6 PCJV and formed it) presented a master license agreement (hereinafter, the "MLA")
7 to Koren and Koren signed the MLA on behalf of PCJV, thus satisfying PCJV's
8 obligations under each governing document and converting PCJV's non-
9 transferrable perpetual trademark license and vested control rights into a
10 transferrable 50-year license. A true and correct copy of the MLA is attached hereto
11 as **Exhibit E** and incorporated by reference herein.

12 20. At no point did Cinco while represented by DLA ever take the position
13 that the MLA was unenforceable, inoperative, unsigned, etc. Quite the contrary,
14 each of DLA, PCJV, Cinco Group, and LA Group at various times (but consistently
15 for 15 years, even after disputes arose among them, including by Myrose Victor,
16 formerly of Cinco and now SPAVI's "Head of Investor Relations and Corporate
17 Strategy and Planning Director") reported, adopted, and affirmed in PCJV's
18 franchise disclosure documents ("FDDs") – originally drafted and issued by DLA –
19 that the MLA's terms were operative:

20 Under a License Agreement with Cinco dated October 1, 2010, Cinco
21 has licensed us to use the Marks and to sublicense them to our franchise
22 owners to use in operating Potato Corner Stores. The license agreement
23 is for 20 years with 3 successive automatic 10 year renewal terms. Cinco
24 can terminate the Trademark License Agreement if we breach the
Agreement and fail to cure within 30 days of written notice. We can
terminate the Trademark License Agreement anytime upon 60 days'
notice. Cinco has the right to approve all proposed uses of the Marks. No
other agreement limits our right to use or license the Marks.

25 21. Further with respect to the MLA, Cinco: (a) agreed to waive all fees
26 each year *and*, as memorialized in Board minutes, Cinco agreed to receive
27 remuneration through distribution income from PCJV instead of a royalty-bearing
28 license; (b) secretly profited millions of dollars from the sale of up-charged supplies

1 to PCIT; and (c) never accused PCJV, or any Cross-Complainant, as breaching any
2 obligation to pay any royalties. To the contrary, Cinco made it known – and PCJV’s
3 Board approved – that any rights to remuneration for providing a license to PCJV
4 would come from PCJV’s distributions: “On the 30/30 share of Franchise Fees and
5 Royalties per Joint Venture Agreement: Board has approved that this will not be an
6 expense in the P & L of PCJV but shall be given as part of its distributive income.”
7 The JVA, LLC Agreement, AJVA, and MLA will hereinafter be collectively
8 referred to as the “PCJV Governing Documents.”

9 22. In 2017, the Cinco Group sold 55% of their Cinco stock to a third-party
10 group (the “Hernandez Group”) in the Philippines who then claimed to be the
11 majority owner of PCJV in contravention of the LA Group’s prior consent rights in
12 addition to the LA Group’s right of first refusal rights. Certain PCJV board meetings
13 and discussions ensued. Among them included the understanding that PCJV “will
14 start working with “Newly Weds” spice company for the sourcing of the seasonings
15 from their US plants and the LA Group will negotiate on PCJVs behalf.” This was
16 important to PCJV and PCIT because for years, the stream of supply from
17 Philippines-based Ferna Corporation (the original supplier of seasonings) was
18 erratic and problematic causing harm to the Potato Corner USA franchise system.

19 23. In 2018, and for reasons not relevant here but having to do with pure
20 greed, Cinco (and Cinco alone), through DLA, initiated a state court action against
21 Koren. Cinco briefly prevailed but failed at a hostile takeover attempt of PCJV; after
22 granting an *ex parte* TRO restraining Koren as PCJV’s President from using
23 intellectual property belonging to PCJV, a state court denied Cinco’s preliminary
24 injunction motion and granted Koren a wide-sweeping injunction protecting Koren’s
25 control over all of PCJV’s business and affairs, including the licensing of the U.S.
26 trademarks to franchisees. In 2019, the Cinco Group tried to change the *status quo*
27 again, but the state court embraced its June 2018 injunction ruling and denied relief.
28

1 24. During the state court litigation, and sometime after DLA substituted
2 out of the case in place of new counsel (SPAVI's current counsel), Cinco took the
3 position that the MLA was unenforceable, and that Cinco (allegedly) never signed it.
4 This was a "new" revelation, but nothing that carried any weight as the parties – and
5 PCJV was independently represented, and so were the Cinco Group, the LA Group
6 LLC, and Koren – annually represented in the FDDs that the terms of the MLA were
7 operative.

8 25. Mediation of the state court action began in January and February
9 2021, and in March 2021, Koren made a settlement proposal, which was based on a
10 framework that involved Koren owning all U.S. interests and either: (a) entering a
11 *new* license agreement with periodic license fees or; (b) *PCJV maintaining its*
12 *irrevocable, perpetual rights*. Leading these settlement discussions were Michael D.
13 Murphy (Plaintiff's counsel here) for the Cinco parties and Arash Beral
14 (Defendants' counsel here) for the Koren parties. On November 1, 2021, Mr. Beral
15 noted to Mr. Murphy: "Cinco also fails to address the value of the perpetual license
16 PCJV owns."

17 26. Almost a year into mediation, Cross-Complainants discovered a
18 surprise filing regarding an undisclosed (and still undisclosed) "Asset Purchase
19 Agreement" entered between Cinco and SPAVI. Discussions through the mediator
20 ensued, including Cross-Complainants' stated intentions to immediately seek state
21 court intervention for violations of the state court's preliminary injunction order and
22 breach of fiduciary and contractual duties. On or about February 10, 2022, SPAVI
23 sent a letter to address Cross-Complainants' concerns. In that letter, SPAVI never
24 disclosed that it was purchasing U.S. trademark registrations and wrote only about
25 international assets. It also indicated: "... upon closing, SPAVI would be bound by
26 any agreements related to the licensing of Potato Corner intellectual property in the
27 US." SPAVI effectively attempted to stop Koren from pursuing relief. A true and
28

1 correct copy of SPAVI's February 10, 2022 letter is attached hereto as **Exhibit F**
2 and incorporated by reference herein.

3 27. On February 25, 2022, Cross-Complainants objected to the potential
4 transaction, formally putting Cinco and SPAVI on notice of "continuing and
5 repeated breaches of the PCJV operating agreement's consent and right of first
6 refusal provisions" (at the time, Cross-Complainants believed that Cinco Group
7 intended also to sell to SPAVI their interests in PCJV, which would have triggered
8 the right of first refusal) and noted (again) that there were "perpetual license rights
9 that Cinco granted to PCJV." A true and correct copy of the February 25, 2022 letter
10 is attached hereto as **Exhibit G** and incorporated by reference herein.

11 28. "PCJV's perpetual license rights" as well as other rights under PCJV's
12 Governing Documents, as well as Koren's and his LA Group's consent rights, were
13 repeatedly mentioned throughout the course of the state court case and settlement
14 discussions with Cinco and SPAVI. But in order to avoid future disputes, the parties
15 continued in-person and remote settlement discussions, and also entered a tolling
16 agreement enabling discussions to continue through at least January 2, 2025, a true
17 and correct copy of which is attached hereto as **Exhibit H** and incorporated by
18 reference herein.

19 29. Cross-Complainants and Cinco Group entered a settlement and
20 resolved the state court action on May 28, 2024, including (and releasing) all known
21 and unknown claims against Cross-Complainants, and also stipulated that May 28,
22 2024 would constitute the "Closing" date of their transaction. The Cinco Group
23 (then inclusive of the Hernandez Group) agreed to transfer *all* of their rights and
24 interests in PCJV and PCIT (including the rights and interests in the PCJV
25 Governing Documents) as well as all rights and interests "attached" thereto to GK
26 Capital, with a dismissal of all claims with prejudice.

27 30. Cinco Group, including Cinco, executed, *inter alia*, a membership
28 interest purchase agreement and related assignments, and requested dismissals with
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1 prejudice based on the terms and conditions of the settlement agreement and related
2 documents, and Cross-Complainants reasonably relied upon the terms and
3 conditions of that settlement in resolving the state court action.

4 31. As it pertains to Plaintiff's alleged intellectual property rights in the
5 United States, Cinco plainly and unambiguously represented and warranted that no
6 rights under the PCJV Governing Documents "attached" to the "Interests" being
7 sold to GK Capital were subject to any rights previously sold to SPAVI, and,
8 further, that the "Interests" and the "attached" rights "do not and will not...require
9 any...license" and "do not and will not...violate or conflict with, result in the
10 acceleration of, or create in any party the right to accelerate, terminate, or modify
11 any...license." In other words, *all* rights including the rights to use, receive
12 distributions for, etc. all United States intellectual property (and Israel) were
13 transferred by Cinco (and its affiliates) to GK Capital, to remain with PCJV. True
14 and correct copies of the settlement agreement documents (comprising a settlement
15 agreement, membership interest purchase agreement, and corresponding
16 assignments, collectively, the "Settlement Documents") are attached collectively
17 hereto as **Exhibit I** and incorporated by reference herein.

18 32. Despite the foregoing facts, three days later, on May 31, 2024, SPAVI
19 initiated this action claiming infringement. SPAVI has maintained that it never
20 purchased any interests in PCJV and PCIT but has not (to Cross-Complainants'
21 knowledge) ever admitted or denied whether it stepped into Cinco's shoes by virtue
22 of its alleged transaction with Cinco.

FIRST CLAIM FOR RELIEF

Declaratory Relief

(By Cross-Complainants Against All Cross-Defendants)

26 33. Cross-Complainants incorporate by reference the foregoing paragraphs
27 as though each and every allegation was set forth herein.

28 | //

1 34. As alleged above, each of Cross-Complainants and each of Cross-
2 Defendants have stated, made representations and inducements regarding, claimed,
3 or otherwise have competing interests in intellectual property rights pertaining to the
4 Potato Corner USA franchise system and Potato Corner USA related marks
5 (hereinafter, the “U.S. IP”). With respect to PCIPL, it allegedly is a SPAVI affiliate
6 who independently registered certain Potato Corner related marks in the United
7 States, which were created by Cross-Complainants.

8 35. An actual dispute and controversy exists among these parties regarding
9 their rights, the efficacy of agreements and representations entered and made, the
10 efficacy of alleged termination of licenses, the terms of use of U.S. IP (including
11 which parties are to pay for those rights, if any, and on what amount(s) and terms),
12 ownership and/or license rights, and/or cancellation and/or transfer of the
13 registrations for the U.S. IP to their rightful owner(s).

14 36. In light of the foregoing, Cross-Complainants seek a judicial
15 declaration that: (a) they are the rightful, perpetual owners of U.S. IP under the
16 PCJV Governing Documents; and/or (b) they are the rightful, perpetual owners of
17 U.S. IP under the Settlement Documents; and, further, that all U.S. IP registrations
18 by any party other than Cross-Complainants be ordered canceled and/or transferred
19 to PCJV.

20 37. In the alternative, Cross-Complainants seek a judicial declaration that:
21 (a) PCJV maintains its royalty-free, perpetual license under the PCJV Governing
22 Documents; or (b) PCJV maintains its royalty-free 50-year license under the MLA;
23 and, further, that to the extent any such alternative relief is granted and such relief is
24 conditioned on payment to SPAVI (or PCIPL), Cinco (and/or ROES 1 through 10,
25 inclusive) be ordered to pay for it, or for such other relief the Court deems proper.

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SECOND CLAIM FOR RELIEF

Inducing Breach of Contract

(By Cross-Complainants Against SPAVI)

38. Cross-Complainants incorporate by reference the foregoing paragraphs
as though each and every allegation was set forth herein.

39. As alleged above, the PCJV Governing Documents, as restated,
amended, modified, or appended over time through PCJV meeting minutes, written
communications of the PCJV Board, and/or representations made in FDDs, as well
as the Settlement Documents constitute valid contracts.

40. Cross-Complainants are informed and believe and thereon allege that
SPAVI knew of these contracts.

41. Cross-Complainants are informed and believe and thereon allege that
SPAVI intended to cause the breach of these contracts.

42. Cross-Complainants are informed and believe and thereon allege that
SPAVI's conduct caused the breach of these contracts.

43. Cross-Complainants were harmed as a result of SPAVI's conduct.

44. SPAVI's conduct was a substantial factor in causing Cross-
Complainants' harm.

45. SPAVI's conduct was malicious, oppressive, and/or fraudulent
warranting the imposition of punitive damages.

THIRD CLAIM FOR RELIEF

Intentional Interference with Contractual Relations

(By Cross-Complainants Against SPAVI)

46. Cross-Complainants incorporate by reference the foregoing paragraphs
as though each and every allegation was set forth herein.

47. As alleged above, the PCJV Governing Documents, as restated,
amended, modified, or appended over time through PCJV meeting minutes, written

1 communications of the PCJV Board, and/or representations made in FDDs, as well
2 as the Settlement Documents, as well as supplier contracts constitute valid contracts.

3 48. Cross-Complainants are informed and believe and thereon allege that
4 SPAVI knew of these contracts.

5 49. Cross-Complainants are informed and believe and thereon allege that
6 SPAVI's conduct prevented performance or made performance more expensive or
7 difficult.

8 50. Cross-Complainants are informed and believe and thereon allege that
9 SPAVI intended to disrupt the performance of these contracts and/or knew that
10 disruption of performance was certain or substantially certain to occur.

11 ||| 51. Cross-Complainants were harmed as a result of SPAVI's conduct.

12 52. SPAVI's conduct was a substantial factor in causing Cross-
13 Complainants' harm.

14 53. SPAVI's conduct was malicious, oppressive, and/or fraudulent
15 warranting the imposition of punitive damages.

FOURTH CLAIM FOR RELIEF

Intentional Interference with Prospective Economic Relations

(By Cross-Complainants Against SPAVI)

19 54. Cross-Complainants incorporate by reference the foregoing paragraphs
20 as though each and every allegation was set forth herein.

55. Cross-Complainants and their suppliers were in an economic
relationship that probably would have resulted in an economic benefit to Cross-
Complainants.

24 56. Cross-Complainants are informed and believe and thereon allege that
25 SPAVI knew of these relationships.

26 57. Cross-Complainants are informed and believe and thereon allege that
27 SPAVI's engaged in conduct to destroy the value of these relationships by usurping

1 the benefits of those relationships for themselves or otherwise harming Cross-
2 Complainants' interests in those relationships.

3 58. Cross-Complainants are informed and believe and thereon allege that
4 SPAVI intended to disrupt these relationships or knew that disruption of these
5 relationships was certain or substantially certain to occur.

6 59. Cross-Complainants were harmed as a result of SPAVI's conduct by
7 the disruption of those relationships.

8 60. SPAVI's conduct was a substantial factor in causing Cross-
9 Complainants' harm.

10 61. SPAVI's conduct was malicious, oppressive, and/or fraudulent
11 warranting the imposition of punitive damages.

FIFTH CLAIM FOR RELIEF

Negligent Interference with Prospective Economic Relations (By Cross-Complainants Against SPAVI)

15 62. Cross-Complainants incorporate by reference the foregoing paragraphs
16 as though each and every allegation was set forth herein.

17 63. Cross-Complainants and their suppliers were in an economic
18 relationship that probably would have resulted in an economic benefit to Cross-
19 Complainants.

20 64. Cross-Complainants are informed and believe and thereon allege that
21 SPAVI knew or should have known of these relationships.

22 65. Cross-Complainants are informed and believe and thereon allege that
23 SPAVI knew or should have known that these relationships would be disrupted if
24 they failed to act with reasonable care.

25 66. Cross-Complainants are informed and believe and thereon allege that
26 SPAVI failed to act with reasonable care.

27 67. Cross-Complainants are informed and believe and thereon allege that
28 SPAVI's conduct engaged in wrongful conduct to destroy the value of these

- 1 relationships by usurping the benefits of those relationships for themselves or
- 2 otherwise harming Cross-Complainants' interests in those relationships.

3 68. Cross-Complainants were harmed as a result of SPAVI's conduct by
4 the disruption of those relationships.

5 69. SPAVI's conduct was a substantial factor in causing Cross-
6 Complainants' harm.

7 70. SPAVI's conduct was malicious, oppressive, and/or fraudulent
8 warranting the imposition of punitive damages.

SIXTH CLAIM FOR RELIEF

Aiding and Abetting Torts

(By Cross-Complainants Against SPAVI)

12 71. Cross-Complainants incorporate by reference the foregoing paragraphs
13 as though each and every allegation was set forth herein.

14 72. As alleged above, the PCJV Governing Documents, as restated,
15 amended, modified, or appended over time through PCJV meeting minutes, written
16 communications of the PCJV Board, and/or representations made in FDDs, as well
17 as the Settlement Documents constitute valid contracts, which SPAVI knew existed.

18 73. Cross-Complainants are informed and believe and thereon allege that in
19 engaging in the alleged acquisition of intellectual property assets from Cinco,
20 SPAVI knew that Cinco would be in breach of its “consent” obligations under the
21 PCJV Governing Documents if it were to assign or transfer any PCJV-related rights,
22 interests, or obligations to SPAVI without Koren’s or the LA Group LLC’s consent.
23 SPAVI also knew that Cinco would be in violation of the state court preliminary
24 injunction order if it were to engage in any activity that affected PCJV’s rights and
25 Koren’s management of PCJV. With respect to other of PCJV’s Governing
26 Documents, SPAVI knew of PCJV’s and PCIT’s rights, including long-term rights
27 to use the U.S. IP. With respect to the Settlement Documents, SPAVI knew of the

1 wide-sweeping representations and warranties made therein and the wholesale
2 transfer of all of Cinco's interests to GK Capital.

3 74. Cross-Complainants are informed and believe and thereon allege that
4 despite all that, SPAVI gave substantial assistance or encouragement to Cinco to
5 breach fiduciary and other duties owed to Cross-Complainants and to effectuate a
6 fraud.

7 75. SPAVI's conduct was a substantial factor in causing Cross-
8 Complainants' harm.

9 76. SPAVI's conduct was malicious, oppressive, and/or fraudulent
10 warranting the imposition of punitive damages.

SEVENTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

(By Cross-Complainants Against SPAVI and Cinco)

14 77. Cross-Complainants incorporate by reference the foregoing paragraphs
15 as though each and every allegation was set forth herein.

16 78. As alleged above, Cinco was a joint venturer and partner in PCJV and
17 PCIT, and to the extent that SPAVI stepped into Cinco's shoes by virtue of its
18 alleged acquisition with Cinco, SPAVI became Cinco's successor-in-interest such
19 that it, too, owed (and owes) Cross-Complainants a fiduciary duty.

20 79. SPAVI and Cinco, however, breached their fiduciary duty by failing to
21 use reasonable care or to act with undivided loyalty vis-à-vis Cross-Complainants.

22 80. Cross-Complainants never consented to such conduct by SPAVI and
23 Cinco, and were harmed by that conduct.

24 81. SPAVI's and Cinco's conduct was a substantial factor in causing
25 Cross-Complainants' harm.

26 82. SPAVI's and Cinco's conduct was malicious, oppressive, and/or
27 fraudulent warranting the imposition of punitive damages.

28 ///

EIGHTH CLAIM FOR RELIEF

Breach of Contracts

(By Cross-Complainants Against SPAVI and Cinco)

83. Cross-Complainants incorporate by reference the foregoing paragraphs as though each and every allegation was set forth herein.

84. As alleged above, Cinco was a joint venturer and partner in PCJV and PCIT, and to the extent that SPAVI stepped into Cinco's shoes by virtue of its alleged acquisition with SPAVI, SPAVI became Cinco's successor-in-interest such that it, too, owed (and owes) Cross-Complainants contractual duties.

85. As alleged above, the PCJV Governing Documents, as restated, amended, modified, or appended over time through PCJV meeting minutes, written communications of the PCJV Board, and/or representations made in FDDs, as well as the Settlement Documents (which SPAVI represented in February 2022 it would be bound by) constitute valid contracts.

86. Cross-Complainants did all, or substantially all, of the significant things that the contracts required them to do, unless otherwise prevented, waived or excused.

87. SPAVI and Cinco, however, breached these contracts, and Cross-Complainants were harmed by those breaches.

88. SPAVI's and Cinco's conduct was a substantial factor in causing Cross-Complainants' harm.

NINTH CLAIM FOR RELIEF

Breach of the Implied Covenant of Good Faith and Fair Dealing

(By Cross-Complainants Against SPAVI and Cinco)

89. Cross-Complainants incorporate by reference the foregoing paragraphs as though each and every allegation was set forth herein.

90. As alleged above, Cinco was a joint venturer and partner in PCJV and PCIT, and to the extent that SPAVI stepped into Cinco's shoes by virtue of its

1 alleged acquisition with SPAVI, SPAVI became Cinco's successor-in-interest such
2 that it, too, owed (and owes) Cross-Complainants contractual duties, including the
3 duty underlying the implied covenant of good faith and fair dealing.

4 91. As alleged above, the PCJV Governing Documents, as restated,
5 amended, modified, or appended over time through PCJV meeting minutes, written
6 communications of the PCJV Board, and/or representations made in FDDs, as well
7 as the Settlement Documents, and the Tolling Agreement, constitute valid contracts,
8 all of which maintained implied covenants of good faith and fair dealing.

9 92. Cross-Complainants did all, or substantially all, of the significant
10 things that the implied covenants of good faith and fair dealing underlying the
11 contracts required them to do, unless otherwise prevented, waived or excused.

12 93. SPAVI and Cinco, however, breached the implied covenants of good
13 faith and fair dealing underlying the contracts by engaging in negotiations in bad
14 faith to effectuate a fraud or otherwise obtain an upper hand against Cross-
15 Complainants, and by engaging in efforts to undermine Cross-Complainants' long-
16 term rights in the U.S. IP.

17 94. Cross-Complainants were harmed by those breaches of the implied
18 covenant of good faith and fair dealing.

19 95. SPAVI's and Cinco's conduct was a substantial factor in causing
20 Cross-Complainants' harm.

TENTH CLAIM FOR RELIEF

Violations of Business & Professions Code §§ 17200, *et seq.*

(By Cross-Complainants Against all Cross-Defendants)

24 | 96. Cross-Complainants incorporate by reference the foregoing paragraphs
25 | as though each and every allegation was set forth herein.

26 97. By virtue of the conduct alleged above, including continuing threatened
27 conduct to harm Cross-Complainants, Cross-Defendants have engaged in unlawful,

1 unfair, and/or fraudulent business practices in violation of California Business and
2 Professions Code, Section 17200, *et seq.*

3 98. Cross-Complainants are informed and believe and thereon allege that
4 Cross-Defendants have assisted in creating and/or created an enterprise in the
5 United States designed to unfairly compete with Cross-Complainants, including
6 usurping Cross-Complainants' goodwill and trading on it.

7 99. As a direct and proximate result of Cross-Defendants' conduct, Cross-
8 Complainants have lost, and Cross-Defendants have gained, money or property at
9 Cross-Complainants' expense and/or otherwise have acted in a manner that is
10 unlawful, unfair, and/or fraudulent.

11 100. As a result, Cross-Complainants are entitled to restitution and
12 injunctive relief under the Business & Professions Code.

13 101. SPAVI's and Cinco's conduct was a substantial factor in causing
14 Cross-Complainants' harm.

ELEVENTH CLAIM FOR RELIEF

Quantum Meruit

(By Cross-Complainants Against all Cross-Defendants)

18 102. Cross-Complainants incorporate by reference the foregoing paragraphs
19 as though each and every allegation was set forth herein.

20 103. In the event it is determined that Cross-Complainants do not have
21 binding long-term rights to the U.S. IP, it remains true that Cross-Complainants
22 spent nearly 15 years at great expense to add substantial value to the U.S. IP. As
23 such, they are entitled to the reasonable value they created, developed, and/or added
24 (and which Cross-Defendants gained) by the doctrine of quantum meruit.

25 104. Cross-Complainants seek, in the alternative to damages and other
26 claims asserted above, quantum meruit recovery for the value they created,
27 developed, added with respect to the U.S. IP.

28 | //

TWELFTH CLAIM FOR RELIEF

Accounting

(By Cross-Complainants Against all Cross-Defendants)

105. Cross-Complainants incorporate by reference the foregoing paragraphs as though each and every allegation was set forth herein.

106. Cross-Defendants have earned millions of dollars by exploiting the rights of Cross-Complainants as alleged above.

107. The amounts and status of the funds received by Cross-Defendants is unknown at this time and could only be ascertained by an accounting.

108. Cross-Complainants thus demand an accounting of all funds belonging to them.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38(b), Cross-Complainants demand a trial by jury of all issues triable herein.

PRAYER FOR RELIEF

WHEREFORE, Cross-Complainants pray for:

1. Declaratory relief;
 2. Accounting;
 3. Constructive trust(s);
 4. Damages in an amount subject to proof at trial;
 5. Restitution;
 6. Disgorgement;
 7. Injunctive relief;
 8. Punitive damages;
 9. Quantum meruit;
 10. Pre- and post-judgment interest;
 11. Reasonable attorneys' fees and costs as may be allowed; and
 12. Such further and other relief as this Court deems just and proper.

1 DATED: February 20, 2025

BLANK ROME LLP

2 Bv: /s/ *Arash Beral* _____

3 Arash Beral

4 Todd Malynn

5 Victor Sandoval

6 Attorneys for Defendants, Counterclaimants,
7 and Third Party Plaintiffs PCJV USA, LLC,
8 PCI TRADING LLC, POTATO CORNER,
9 LA GROUP, LLC, GK CAPITAL GROUP,
10 LLC, NKM CAPITAL GROUP, LLC and
11 GUY KOREN, and Defendants J & K
12 AMERICANA, LLC, J&K LAKEWOOD,
13 LLC, J&K OAKRIDGE, LLC, J&K
14 VALLEY FAIR, LLC, J & K ONTARIO,
15 LLC, J&K PC TRUCKS, LLC, HLK
16 MILPITAS, LLC, and GK CERRITOS,
17 LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 20, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's Electronic Case Filing (ECF) system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.
Executed on February 20, 2025.

By: /s/AJ Cruickshank